

**United States Department of Labor
Employees' Compensation Appeals Board**

S.G., Appellant

and

**U.S. POSTAL SERVICE, SOUTH ARLINGTON
STATION, Akron, OH, Employer**

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**Docket No. 16-1882
Issued: March 22, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 23, 2016 appellant, through counsel, filed a timely appeal from an August 1, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has established more than five percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal, counsel argues that the decision is contrary to fact and law.

FACTUAL HISTORY

On December 16, 2013 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2013 she sustained a right ankle fracture when she slipped and fell on a snowy day while delivering mail. She stopped work on the day of the injury. OWCP accepted the claim for right closed lateral malleolus ankle fracture and right distal tibiofibular ligament ankle sprain and authorized ankle surgery, which occurred on December 15, 2013. It paid appellant wage-loss compensation on the supplemental rolls for the period January to July 26, 2014.

On June 9, 2014 appellant accepted a modified letter carrier job offer working for two and one-half hours per day. She returned to work on June 23, 2014, and to full-time full-duty work on July 28, 2014.

In a December 19, 2014 note, Dr. Eric T. Miller, a treating Board-certified orthopedic surgeon, indicated that appellant reached maximum medical improvement (MMI) as of December 11, 2014.

On January 6, 2015 appellant filed a claim for a schedule award (Form CA-7).

In an April 9, 2015 report, Dr. Catherine Watkins Campbell, a physician Board-certified in family practice and occupational medicine, provided a permanent impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³ She observed that:

“Appellant ambulated with a moderately antalgic gait more pronounced without shoes. She was unable to toe walk on the left. There was mild swelling of the ankle but no temperature changes. The right ankle mortise measured 29.7 centimeters (cm) and the left 27.5 cm. There was asymmetric mild lateral laxity of the right ankle. There was a 12 cm lateral scar that ran to the dorsum of the mid foot. There was mild diffuse extensor tendon tenderness across the dorsum of the foot and ankle. Normal strength noted. ‘Both calves measured 47.5 cm. Range of motion of the right ankle measured 40, 38, 32 degrees of dorsiflexion, 24, 24, 24 degrees of plantar flexion, 14 122m 14 degrees of eversion, 20, 18.’
*** There was no significant varus or valgus deformity at the ankle.”

Dr. Watkins Campbell assigned class 1 for mild motion deficits using Table 16-2. She assigned a grade modifier of two for functional history, one for physical examination modifier, and zero for clinical studies modifier. Using the net adjustment formula, Dr. Watkins Campbell determined that appellant had 10 percent right lower extremity permanent impairment. The date of MMI was determined to be December 12, 2014, based on Dr. Miller’s opinion.

³ A.M.A., *Guides* (6th ed. 2009).

On May 22, 2015 OWCP's medical adviser reviewed Dr. Watkins Campbell's impairment rating and determined that appellant had five percent right lower extremity permanent impairment. He observed that the findings of 40 degrees right ankle dorsiflexion appeared to be a typographical error as 20 degrees was the maximum for dorsiflexion. The medical adviser also noted the two numbers for right ankle eversion probably were attributable to right ankle inversion. He recommended that OWCP obtain clarification from Dr. Watkins Campbell on the range of motion as a key factor. In reaching his impairment rating, the medical adviser assigned class 1 for the diagnosis of bi-malleolar fracture with range of motion within normal ranges. He assigned a grade modifier of one for functional history using Table 16-6, page 516 and a grade modifier of one for physical examination using Table 16-7, page 517. Using Table 16-6, page 516, the medical adviser explained that he assigned a grade modifier of one instead of two for functional history adjustment as there was no documentation of an antalgic gait requiring the use of a cane, crutch, or external orthotic device, or positive Trendelenburg test. He assigned a grade modifier of one for physical examination findings of mild swelling using Table 16-7, page 517. The medical adviser noted that no modifier was assigned for clinical studies using Table 16-8, page 519. Using the net adjustment formula, he found the final grade to be C with a permanent impairment rating of five percent.

On July 9, 2015 OWCP requested that Dr. Watkins Campbell clarify her report. In a letter dated July 20, 2015, counsel informed OWCP that there would be no response forthcoming from Dr. Watkins Campbell.

By decision dated September 10, 2015, OWCP granted appellant a schedule award for five percent right lower extremity permanent impairment. The period of the award was from January 23 to May 3, 2015.

In a letter dated September 21, 2015, counsel requested a telephonic hearing before an OWCP hearing representative. The hearing was held on May 17, 2016.

By decision dated August 1, 2016, OWCP's hearing representative affirmed the September 10, 2015 schedule award determination. She found OWCP's medical adviser constituted the weight of the evidence as he properly applied the A.M.A., *Guides* when determining permanent impairment.

LEGAL PRECEDENT

Under section 8107 of FECA⁴ and section 10.404 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions, or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404

adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁷ Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

In determining impairment for the lower extremities, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the ankle, the relevant portion of the leg (foot) for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501.¹⁰ After the class of diagnosis is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for functional history, grade modifier for physical examination, and grade modifier for clinical studies.¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted the claim for right closed lateral malleolus ankle fracture and right distal tibiofibular ligament ankle sprain. It authorized ankle surgery, which occurred on December 15, 2013. Appellant filed a claim for a schedule award on January 6, 2015. By decision dated September 10, 2015, OWCP granted her a schedule award for five percent right lower extremity permanent impairment, which was affirmed by an OWCP hearing representative by decision dated August 1, 2016.

⁶ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ A.M.A., *Guides* 3 (6th ed. 2009), section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁸ A.M.A., *Guides* 494-99 (6th ed. 2009).

⁹ *Id.* at 497.

¹⁰ *Id.* at 501-07.

¹¹ *Id.* at 515-22.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

In support of her claim for an additional schedule award, appellant submitted an April 9, 2015 impairment rating by Dr. Watkins Campbell. Dr. Watkins Campbell reviewed medical records and the history of the employment injury. She provided examination findings and diagnosed right ankle closed lateral malleolus fracture and right ankle sprain distal tibiofibular ligament. Dr. Watkins Campbell noted that Dr. Miller found that appellant had reached MMI on December 12, 2014. She referenced Table 16-2 of the A.M.A., *Guides* and classified appellant's impairment as a class 1 for mild right ankle motion deficits. Dr. Watkins Campbell assigned a grade modifier of 2 for functional history, 1 for physical examination, and 0 for clinical studies. Applying the net adjustment formula, she calculated an adjustment of 0, which resulted in a permanent impairment rating of 10 percent for the right lower extremity.

OWCP's medical adviser reviewed Dr. Watkins Campbell's impairment rating and disagreed with her assessment. He explained that the record did not support Dr. Watkins Campbell's assigning a grade modifier of 2 for functional history. According to Table 16-6, page 516 a grade modifier of 2 is warranted for moderate problems based on the documentation of an antalgic gait requiring a cane or crutch, no external orthotic device was required and there was no positive Trendelenburg test. On July 9, 2015 OWCP requested that Dr. Watkins Campbell clarify her report, but on July 20, 2015 counsel advised that no further report would be provided.

OWCP's medical adviser reviewed the medical record and opined that appellant had five percent permanent impairment of her right lower extremity. He utilized Table 16-2, page 503, and assigned class 1 impairment for bi-malleolar fracture with range of motion within normal ranges, with a default value of five percent for grade C. The medical adviser reported a grade modifier of 1 for functional history due to continued ankle symptoms. He also assigned grade modifiers of 1 for physical examination due to mild swelling and 0 for clinical studies. After applying these grade modifiers to the net adjustment formula, the medical adviser concluded that appellant had five percent right lower extremity permanent impairment.

The Board finds that the weight of the medical evidence rests with the opinion of OWCP's medical adviser as he provided the only impairment rating that properly applied the sixth edition of the A.M.A., *Guides*.¹³ The Board notes that the medical adviser properly reviewed the medical record and evaluated appellant's right lower extremity in accordance with the A.M.A., *Guides*. The medical adviser appropriately applied the sixth edition of the A.M.A., *Guides* in determining that appellant had five percent permanent impairment of the right lower extremity. Dr. Watkins Campbell's impairment rating failed to establish that appellant sustained permanent impairment greater than five percent for the right lower extremity.¹⁴ The record does not contain any other current medical evidence in conformance with the A.M.A., *Guides* that shows greater impairment.

¹³ *M.C.*, Docket No. 15-1757 (issued March 17, 2016). The only medical evidence that demonstrated a proper application of the A.M.A., *Guides* was the report of the medical adviser).

¹⁴ A.M.A., *Guides* 516.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant failed to establish more than five percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2016 is affirmed.

Issued: March 22, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board